

MEMORANDUM OF LAW

DATE: May 5, 1987

TO: Conny Jamison, City Treasurer

FROM: City Attorney

SUBJECT: Disclosure of Information Pertaining to the
Treasurer's Annual Tender for Sewer Bonds, 4%
of 2001

Your memorandum of April 13, 1987 requested our opinion on the disclosure by you of the prices and spreads relative to City sewer bond tenders. You have asked specifically whether you may decline to furnish such information to a financial bond marketing and sales director who is not involved with the transfer or paying agent. You have advised us that it is not your policy to release such information because it may result in the City having to pay a higher price to redeem such bonds during a tender.

As we understand your concerns, which you further elaborated on during a telephone conversation, you are authorized to retire a certain amount of bonds annually. By issuing a request to tender, you thereby generate a certain flexibility into the bond market which may allow you to redeem the bonds at less than par value; whereas, if you are forced to "call" the bonds, you must then pay par value. You can be forced to "call" the bonds if no one responds to the tender offer. The information that is requested regarding the price paid, the amount of the tender and the spread would conceivably allow prospective bond merchants to manipulate the market in such a fashion as to require a "call," or else the payment of a higher price (though less than par) for the tender. The financial wisdom of saving the City and the taxpayers money is indisputable.

The information requested is available from only two sources: the bank through which the bonds are redeemed or the City Treasurer's office. The bank will not disclose the information

without your approval. The information itself is not part of a formal record system, but exists only on tabulation sheets that you retain in your office.

We should observe that the tabulation sheets would qualify as public records under both state and city law. See Government Code section 6252 and San Diego Municipal Code section 22.2604. Under Government Code section 6253, such records are disclosable unless a specific exemption under section 6254 applies, or unless a privilege pursuant to section 6255 is claimed.

Section 6254(a) provides that disclosure is not required of Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure.

Caselaw involving financial data and records takes the position that absent some showing that the public's interests are jeopardized by disclosure, release should be permitted. See *San Gabriel Tribune v. Superior Court*, 143 Cal.App.3d 762, 192 Cal.Rptr. 415 (1983), petition for hearing denied, August 17, 1983. This test, however, is similar to the test for claiming a privilege pursuant to section 6255 which provides:

The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

In the situation you described, keeping the financial information confidential enables you to redeem more bonds for the budgeted amount than you could were the information publicly disseminated. This would meet the requirement for claim of privilege as meeting the public interest test. Therefore, to the

extent that such nondisclosure meets a legitimate public need, you may continue to refuse to disclose such information as a matter of policy should you so elect.

JOHN W. WITT, City Attorney

By

Rudolf Hradecky

Deputy City Attorney

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